

**REMARKS**

Claims 26-35, 40-46 and 94 are pending in this application. All claims are rejected.

Applicants thank Examiner Kardos for the courtesy of the interview previously summarized. Claim 94 has been amended in the fashion that Examiner Kardos indicated appears to distinguish over the art of record.

**Rejection Under 35 U.S.C. § 103(a) of Claims 26-35, 37, 40-46, and 94**

The Examiner rejects **claims 26-35, 37, 40-46, and 94** under 35 U.S.C. § 103(a) as unpatentable over Garry (*Making Space Management Work*) in view of Landvater (U.S. 6,609,101).

**Claim 94**

**Claim 94**, as amended, distinguishes over the art of record because it describes a sequence of data entry for display fixture types, names for instances of a fixture type that are used for particular groupings of product assortments (named display fixtures), presence of the named display fixtures in individual stores of a chain, and stocking of the named display fixtures with particular product assortments for particular dates. The structure of data entry accommodates stores with differing floor plans and facilitates merchandise planning that can apply across a chain of stores, without the third user, who enters the merchandise stocking plan, needing to be concerned about the particular floor plans and placement of the named display fixtures within the stores.

The Apollo planograms depicted in our previous response point the opposite direction. Using Garry's planograms is like using Visio to lay out particular shelves that are located in particular aisles of particular stores. Garry describes adding planning staff to adapt a general merchandising plan by drawing store-specific planograms for multiple stores of the Big Y grocery store chain. (Garry is a description of public use of technology, as opposed to a teaching of how to make and use the planning software. Therefore, the context in which the software reportedly was used is part of understanding the public use.)

Applicants' understanding of our interview is that the Examiner at least tentatively agrees that the amended claim 94 distinguishes over the art of record. Therefore, claim 94 should be allowable over Garry in view of Landvater.

The remaining claims should be allowed for at least the same reasons as claim 94, from which they depend.

#### Claim 26

**Claim 26** includes the limitations:

*for the items to be displayed, designating whether or not a quantity of the item at the store should be allowed to fall below the presentation quantity between deliveries.*

These limitations are not found in Garry in view of Landvater.

The mention of a "slush factor" in Garry (OA at 6) does not describe public use of an analytical configuration parameter that determines how a simulation should be conducted. Moreover, the "slush factor" is applied to a space allocation program, rather than the Apollo planogram on which much of the Examiner's argument rests. There is no rational basis given (OA at 6) for Landvater to import the "slush factor" for space allocation into any of the technology that Landvater describes. As for combining the "slush factor" with Apollo, Barry describes the manual combination of Apollo's planogram with space allocation that was being used by those of ordinary skill in the art in 1991, and it does not read on claim 26.

The Examiner previously acquiesced in our position that Landvater does not read on this limitation. *Compare, 2007-08-06 Response to Office Action*, at 22.

Therefore, claim 26 should be allowable over Garry in view of Landvater.

#### Claims 27-29

**Claims 27-29** include the limitations:

*wherein the time elements include delivery of the item from a stocking location.*

*wherein the time elements include preparing the delivered item for sale.*

*wherein the time elements include time required to collect data, review action recommendations, process data, pick goods at a stocking location, and ship the item to the store.*

These limitations are not found in Garry in view of Landvater.

We previously have explained how Landvater, on which the Examiner relies (OA at 6) lacks these elements. *2007-08-06 Response to Office Action*, at 23-24. We incorporate by reference our prior arguments.

Therefore, claims 27-29 should be allowable over Garry in view of Landvater.

Claims 30 and 35

**Claims 30 and 35** should be allowable over Garry in view of Landvater for at least the same reasons as the claims from which they depend.

Claims 31-34

**Claims 31-34** include the limitations:

*wherein the time elements include time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations.*

*wherein the time elements include time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations.*

*wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of stores.*

*wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of stores.*

These limitations are not found in Garry in view of Landvater.

We previously have explained how Landvater, on which the Examiner relies (OA at 6) lacks these elements. *2007-08-06 Response to Office Action*, at 23-24. We incorporate by reference our prior arguments.

Therefore, claims 30-34 should be allowable over Garry in view of Landvater.

Claim 40

**Claim 40** includes the limitations:

*wherein the simulating includes adding the presentation quantities and the simulated sales for the item at the stores.*

These limitations are not found in Garry in view of Landvater.

We previously have explained how Landvater, on which the Examiner relies (OA at 6) lacks these elements. *2007-08-06 Response to Office Action*, at 25-26. We incorporate by reference our prior arguments.

Therefore, claim 40 should be allowable over Garry in view of Landvater.

Claims 41-44 and 46

**Claims 41-44 and 46** include the limitations:

*further including selecting among a plurality of available approaches to calculating the presentation quantity, wherein the approach selected uses an **average presentation quantity** for the location **during the predetermined selling period**.*

*further including selecting among a plurality of available approaches to calculating the presentation quantity, wherein the approach selected uses a presentation quantity for the selling location on the **first day of the predetermined selling period**.*

*further including selecting among a plurality of available approaches to calculating the presentation quantity, wherein the approach selected uses a presentation quantity on **the day** of the predetermined selling period **when the item is received** at the selling location.*

*further including selecting among a plurality of available approaches to calculating the presentation quantity, wherein the approach selected uses a **largest presentation quantity** associated with the item at the selling location **for any day of the predetermined selling period**.*

*wherein the presentation quantity used is the presentation quantity for the selling location on the **last day of the predetermined selling period**.*

These limitations are not found in Garry in view of Landvater.

We previously have explained how Landvater, on which the Examiner relies (OA at 6) lacks these elements. *2007-08-06 Response to Office Action*, at 28. We incorporate by reference our prior arguments.

Therefore, claims 41- 44 and 46 should be allowable over Garry in view of Landvater.

Claim 45

**Claim 45** includes the limitations:

*selecting the larger of the presentation quantities or the simulated sales for the item at the stores.*

These limitations are not found in Garry in view of Landvater.

Landvater always uses both the presentation quantity (as a threshold) and the projected demand (to reduce the quantity on hand.) There is no suggestion in cols. 14-15 of selecting between the two.

Therefore, claim 45 should be allowable over Garry in view of Landvater.

Applicants respectfully submit that claims 26-35, 40-46, and 94 should be allowable over Garry in view of Landvater.

### **FURTHER INTERVIEW INVITED**

Applicants considered the recent interview very productive and hope that the Examiner had the same opinion. We would be happy to consider a further amendment that would put claim 94 in condition for allowance after the supplemental search.

Applicants would welcome a further interview to resolve all remaining issues, if the Examiner is so inclined. The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

### **CONCLUSION**

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims as now stated.

***Fee Authorization.*** The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0869 (BLFR 1001-1).

Respectfully submitted,

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